

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SHARLENE G. GORDY,)	
)	
Appellant,)	
)	
V.)	C.A. No. N10A-06-004 JRS
)	
FIA CARD SERVICES C/O TALK)	
UCM and UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: May 19, 2011

Date Decided: July 12, 2011

Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.
AFFIRMED.

This 12th day of July, 2011, upon consideration of the *pro se* appeal of Sharlene G. Gordy (“Gordy”) from the decision of the Unemployment Insurance Appeal Board (the “Board”) denying her claim for unemployment benefits against her former employer, Fia Card Services C/O Talk UCM (“Bank of America”), it appears to the Court that:

1. Gordy was employed as a senior account manager by Bank of America

from August 28, 2003 until December 3, 2009.¹ On December 3, 2009, Gordy, while working in a call center, documented a customer's income and monthly expenses on the customer's account.² A supervisor who later listened to the recorded conversation discovered that Gordy had never asked the customer for information regarding the customer's income and monthly expenses.³ Gordy admits that she was aware of the company policy against fabrication of information.⁴ Later that day, Gordy was informed by her manager that, due to her actions, she had been terminated.⁵

2. Gordy filed a claim for unemployment benefits with the Department of Labor ("DOL") on December 7, 2009.⁶ A determination by the Claims Deputy that Gordy was disqualified from receiving benefits was dated and mailed to her on December 24, 2009.⁷ Pursuant to 19 *Del. C.* §3318(b), an appeal of the denial of benefits must be made within 10 calendar days after such determination was mailed

¹Record at 4 (hereinafter "R at _").

²R. at 7.

³*Id.*

⁴R. at 2.

⁵*Id.*

⁶R. at 4.

⁷R. at 8.

to the claimant.⁸ Gordy filed a late appeal on January 6, 2010.⁹

3. On March 1, 2010, the Appeals Referee conducted a hearing on the issue of timeliness only.¹⁰ The Referee concluded that there was no evidence which suggested that Gordy's late filing of her appeal was a result of any mistakes or errors made by the DOL in the mailing of the determination.¹¹ Accordingly, the Referee affirmed the decision of the Claims Deputy.¹²

4. Gordy appealed the decision of the Appeals Referee to the Board on March 10, 2010.¹³ On May 5, 2010, the Board concluded that there was no evidence of departmental error and that the record supported the inference that the only reason for Gordy's delay in filing an appeal was unrelated to any factor within the control of the DOL or subject to any remedy by the Board.¹⁴ The Board noted that Gordy

⁸19 *Del. C.* §3318(b) states: "Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with §3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claim's Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith."

⁹R. at 9.

¹⁰R. at 13.

¹¹R. at 14-15.

¹²R. at 15.

¹³R. at 18.

¹⁴R. at 20.

had not shown that she missed the filing deadline because of severe circumstances (thereby allowing the Board to exercise its discretion to accept the untimely appeal *sua sponte*).¹⁵

5. On appeal to this Court, Gordy contends that she was out of town when she was mailed the appeals information and thus did not have the opportunity to appeal prior to the deadline.¹⁶ Because she was out of town and her mail was withheld until she returned on January 5, 2010, Gordy contends that the Court should exercise its discretion to permit her appeal even though it was not filed within the requisite ten day period.¹⁷

6. This Court's review is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.¹⁸ Substantial evidence is defined as "such relevant evidence as a reasonable mind might

¹⁵R. at 20. *See Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991) (the Board may only exercise its discretionary authority "where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interest of justice would not be served by inaction.").

¹⁶R. at 25.

¹⁷R. at 25.

¹⁸*See, e.g., Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, *3 (Del. Super. 2003).

accept as adequate to support a conclusion.”¹⁹ The record must be reviewed in the light most favorable to the prevailing party.²⁰ Alleged errors of law are reviewed *de novo*, but in the absence of legal error, the Board’s decisions are reviewed for an abuse of discretion.²¹ This Court will find an abuse of discretion only when an administrative board’s decision “exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.”²²

7. It is clear from the record that Gordy failed to file a timely appeal pursuant to 19 *Del C.* §3318(b). Exercise of discretion under 19 *Del C.* §3320 is limited to situations in which the DOL committed some administrative error which deprived the claimant of an opportunity to file a timely appeal or to situations in which the interest of justice would be served by extending the deadline.²³ It is not alleged that the DOL committed an administrative error.²⁴ Nor are there other

¹⁹*James Julian, Inc. of Delaware v. Testerman*, 740 A.2d 514, 519 (Del. Super. 1999) (citations omitted).

²⁰*E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. 2004).

²¹*Merritt v. United Parcel Serv.*, 956 A.2d 1196, 1200 (Del. 2008) (citations omitted).

²²*Bolden v. Kraft Foods*, 2005 WL 3526324, *3 (Del. Super. 2005).

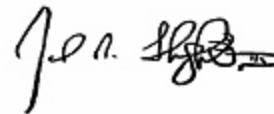
²³*See supra* n.14 and accompanying text.

²⁴*See supra* n.6.

mitigating circumstances that would require the Board to waive the applicable appeal deadline.²⁵

8. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board dismissing Gordy's appeal of the Appeals Referee's decision must be **AFFIRMED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. R. Slights, III".

Joseph R. Slights, III, Judge

Original to Prothonotary

²⁵ See *Hartman v. Wireless Castle, Inc.*, 2004 WL 772067, *3 (Del.Super. 2004) (holding that claimant assumed the risk of an adverse decision from which a timely appeal would be required by leaving for vacation without making proper arrangements for notification and, therefore, affirming the Appeal Referee's decision to jurisdictionally bar claimant's late appeal pursuant to 19 *Del. C.* §3318(b)).